



# OLR RESEARCH REPORT

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## **OLR BACKGROUNDER: DEFERRED ACTION FOR CHILDHOOD ARRIVALS**

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### **SUMMARY**

United States Citizenship and Immigration Services (USCIS) defines “deferred action” as a prosecutor’s discretionary determination to defer an individual’s removal from the United States. On June 15, 2012, the U.S. homeland security secretary announced that certain individuals who arrived in the United States as children and meet specific criteria could request such deferred action. A deferral is granted for two years, subject to renewal, and also makes the individual eligible for work authorization.

Deferred status is not a path to citizenship. According to USCIS, an individual granted the status will not accrue unlawful presence time in the United States while the deferred action is in effect. However, deferred action does not excuse any previous or subsequent periods of unlawful presence.

For more information, please refer to USCIS’ [“Frequently Asked Questions”](#) web page.

### **ELIGIBILITY GUIDELINES**

An individual may request consideration for deferred action for childhood arrival status if he or she:

1. was under age 31 as of June 15, 2012;
2. was under 16 when he or she arrived in the United States;
3. has continuously resided in the U.S. from June 15, 2007 to the present (see “Travel Restrictions” below);
4. was in the U.S. (a) on June 15, 2012 and (b) when he or she requested deferred action consideration;
5. (a) entered the U.S. without inspection before June 15, 2012 or (b) had lawful immigration status that expired as of June 15, 2012;
6. (a) is currently in school (see “School Requirements” below), (b) graduated or received a certificate of completion from high school, (c) obtained a GED certificate, or (d) is an honorably discharged Coast Guard or U.S. Armed Forces veteran;
7. has not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors (see “Misdemeanors” below); and
8. does not pose a threat to national security or public safety.

An individual may still be eligible for deferred action for childhood arrival status even if he or she is (a) in removal proceedings, (b) has a final order of deportation, or (c) has a voluntary departure order, as long as he or she is not in immigration detention.

### ***Travel Restrictions***

A brief, casual, innocent absence from the United States does not count against an individual’s required “continuous residence” in the country. An absence qualifies as brief, casual, and innocent if it was before August 15, 2012 and:

1. was short and reasonably calculated to accomplish the absence’s purpose;
2. was not because of an order of exclusion, deportation, or removal;
3. was not because of an order of voluntary departure, or an administrative grant of voluntary departure before being placed in exclusion, deportation or removal proceedings; and

4. the absence's purpose and all actions taken while outside the United States were legal.

An individual may travel outside the United States once his or her request for deferred action is granted, but he or she must apply for and receive advance parole from USCIS before doing so.

### ***School Requirements***

In order to be considered “currently in school,” an individual must be enrolled in:

1. a public or private elementary school, junior high or middle school, high school, or secondary school;
2. an education, literacy, or career training program that is designed to lead to placement in postsecondary education, job training, or employment; or
3. an education program assisting students either in (a) obtaining a high school diploma, or (b) passing a General Education Development exam or other equivalent state-authorized exam.

### ***Misdemeanors***

USCIS defines a “significant misdemeanor” as an offense for which the maximum authorized prison term under federal law is more than five days but no more than one year. Additionally, for a misdemeanor to be considered “significant”, it must either be an offense:

1. of domestic violence, sexual abuse or exploitation, burglary, unlawful firearm possession or use, drug distribution or trafficking, or driving under the influence; or
2. for which the individual was sentenced to prison for more than 90 days. (Suspended sentences do not count towards the 90 day requirement.)

Minor traffic offenses do not count towards the “three or more other misdemeanors” prohibition in the guidelines.

## **APPLICATION PROCESS**

### ***Required Documents***

An applicant must submit the following forms to USCIS along with filing fees totaling \$465:

1. Form [I-821D](#) (Consideration of Deferred Action for Childhood Arrivals),
2. Form [I-765](#) (Application for Employment Authorization), and
3. Form [I-765WS](#) (Form I-765 Worksheet).

The applicant may be granted a fee exemption if he or she has an income that is less than 150% of the U.S. poverty level and:

1. is under age 18 and homeless, in foster care, or lacking any parental or familial support;
2. cannot care for himself or herself because of a serious chronic disability; or
3. at the time of the request, has accumulated \$25,000 or more in debt in the previous 12 months due to unreimbursed medical expenses for himself, herself, or a family member.

An applicant must submit all of the forms together, even if he or she is not intending to seek employment, or else USCIS will not process the application.

### ***Immigration Enforcement Policy***

According to USCIS, the information in a deferred action request is protected from disclosure to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CPB) for immigration enforcement proceedings unless the application states that the applicant has committed serious criminal offenses i.e. felonies, serious misdemeanors, or three or more other misdemeanors. (Such offenses would also automatically disqualify the applicant from deferred action status.)

The application may also be shared with ICE and CPB for reasons other than removal, including:

1. for assistance in consideration of a deferred action for childhood arrival request;
2. to identify and prevent fraudulent claims;
3. for national security purposes; and
4. investigating or prosecuting crimes.

### **POLICY LONGEVITY**

It is unclear how long this policy will remain in effect. USCIS [states](#) on its website:

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

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